

**Commonwealth Disabled People’s Forum**

 **c/o World of Inclusion**

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**CDPF Brief Information on Implementation of UNCRPD Questionnaire.**

Will all DPOs supporting the Relaunch of the Commonwealth Disabled People’s Forum and/or their delegates please ensure this form is completed and emailed back by 3rd June 2019. Delegates in their introduction of 3 minutes will be asked to summarise on 13th June General Assembly. Return to rlrieser@gmail.com by 3rd June 2019

1.Name of your DPO: Canadian Association for Community Living (CACL)

2. Name of your country: Canada

3. Has your country ratified the UNCRPD and when? Canada ratified in 2010.

4. What has your country done to Implement the UNCRPD? Please see attached Civil Society Report.

5. How much is your DP0 involved in implementation with the Government of your country? CACL has a strong history of involvement with implementation of the CRPD in Canada including advocacy at time of writing of the Convention and at time of signing/ratification. We provide leadership during civil society report writing, drafting of Concluding Observations, creation of List of Issues and periodic reviews, as well as provide significant leadership with our government of specific article implementation, including Articles 1-4, 10, 12, 13, 19, 24, 27, and 31-33.

6. Has your DPO been involved in producing a shadow report to go to UNCRPD Committee and How? Yes, we were involved as a member of he 2017 Canadian Civil Society Parallel Report Group, an ad hoc group of 16 disabled peoples organizations and supporters, representing a cross-section of Canadians with disabilities, including persons with mobility disabilities, persons who are culturally Deaf, deaf and hard of hearing, persons with vision disabilities, persons labeled with psycho-social and/or developmental disabilities, persons with dementia, women with disabilities, children with disabilities and Indigenous persons with disabilities.

7. What progress has been made on implementing Inclusive Education?

Please see attached Civil Society Report.

8. What progress has been made on social protection for PWD?

Please see attached Civil Society Report.

9. What progress has been made in implementing employment opportunities for PWD?

Please see attached Civil Society Report.

10. What progress has been made on challenging negative attitudes and stigma to PWD?

Please see attached Civil Society Report.

11. What progress has been made in achieving gender equality for PWD ?

Please see attached Civil Society Report.

12. What capacity building does your DPO need? Unknown at this time.

13. If you are the National Umbrella DPO how do you operate democratically with other DPOs? We are a national DPO for persons with intellectual disabilities and their families. Through our Federation, we work together on shared priorities for the community we represent. Additionally, we have significant partnerships across the Canadian disability and frequently work together on implementation of the CRPD and the new Canadian legislation “Accessible Canada Act”, among other shared priorities.

14. If you are an impairment specific, particular focus or regional DPO how do you work with Umbrella DPO? See above.

15. If there is no national; umbrella DPO. How could one be built? N/A.

16. How does your DPO get funded? Through donors, project-based funding, membership dues, and government funding for national disability organizations.

17. What training capacity does your DPO have? CACL has training capacity in the area of inclusive education, legal capacity and supported decision making, family empowerment, sexual health and abuse prevention, inclusive housing, justice, political and civic engagement, income security, advocacy, safeguards in medical assistance in dying, inclusive employment, deinstitutionalization, building inclusive communities, and Canadian intellectual disability history.

18. What regular training do you provide for PWD? We do not provide regular training.

19. How does your DPO involve young DWP? No strategy at this time.

20. Does your DPO have any experience working in a humanitarian disaster? No.

CRPD Committee 16th Session

March 20 - April 7, 2017

**Parallel Report for Canada**

Contributors

• ARCH Disability Law Centre

• Alzheimer’s Society of Canada

• Canada Without Poverty

• Canadian Association for Community Living

• Canadian Association of the Dead

• Canadian Council on Rehabilitation and Work

• Canadian Centre on Disability Studies

• Canadian National Institute for the Blind

• Canadian Labour Congress

• Council of Canadians with Disabilities

• Disability Rights Promotion International, York University

• DisAbled Women’s Network

• Independent Living Canada

• MAD Canada

• Ontario Network of Injured Workers

• Participation & Knowledge Translation in Childhood Disability Lab, McGill

University

• People First Canada

Canadian Civil Society Parallel Report Group

Canadian Civil Society Parallel Report Group February 27, 2017

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Introduction

This submission is presented by the Canadian Civil Society Parallel Report Group, an ad hoc

group comprised of sixteen Disabled Peoples Organizations (DPOs) and supporters,

representing a cross-section of Canadians with disabilities, including persons with mobility

disabilities, persons who are culturally Deaf, deaf and hard of hearing, persons with vision

disabilities, persons labeled with psycho-social and/or developmental disabilities, persons

with dementia, women with disabilities, children with disabilities and Indigenous persons

with disabilities.1

Our report seeks to provide responses to selected priority areas identified by the committee

in its September 2016 “List of Issues. For Canada.”

Methodology used for development of the reporting group and the

preparation of this submission

In December of 2015 Canadian DPOs met in Ottawa to review preliminary comments on

Canada’s Report, and to consider mechanisms for the preparation of submissions to the

CRPD Committee as it prepared the List of Issues (LOI) and a subsequent parallel report. It

was agreed that the most effective approach would be to form a temporary coalition with a

secretariat and seek finding from the Government of Canada to support its work.

Funding support was obtained in June of 2016 and very quickly the coalition prepared a

submission for consideration by the Committee as it developed the LOI. The Secretariat

initiated a call for submissions for the List of Issues. DPOs from across Canada responded,

providing written submissions about CRPD implementation and the barriers facing persons

with disabilities in Canada. The Secretariat then worked with DPOs to compile this

submission. Members of the Coalition traveled to Geneva in September of 2016 to meet

with the committee to discuss our submission and priority areas for Canadians with

disabilities in the preparation of the LOI.

Following the September publication of the LOI the secretariat, on behalf of the Coalition

again contacted Canadian DPOs first seeking a written response to the Issues raised in the

LOI. These responses were compiled into the first draft of the Parallel Report. Coalition

members then met again in person, in December of 2016 and spent the day prioritizing

their concerns and refining the framework for the Parallel report.

Following this meeting a second draft was developed and shared electronically with DPOs

across the Country with an invitation for final comments. These were received until mid

February and then edited and refined into the final document with follows.

This submission then is based on the observations, experiences, work and expertise of DPOs

and persons with disabilities across Canada. The process of consultation and dialogue

between and amongst Canadian DPOs and supporters has been very well received and will

no doubt continue to be of benefit in the future.

1 See cover page for a complete list of organizational members.

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Executive Summary

Canada is a relatively wealthy country, with established social security policies and

programs, entrenched Constitutional rights and freedoms, and respect for the rule of law.

Despite this, persons with disabilities experience significantly higher rates of poverty,

unemployment, exclusion from education, and discrimination compared to persons without

disabilities in Canada. The DPOs that contributed to this Report are very encouraged by the

steps that the present Government of Canada has taken to protect and promote the human

rights of persons with disabilities. However, we remain concerned that many of the CRPD`s

general obligations and specific rights are not being implemented or realized in Canada.

There is still much that needs to be done to achieve full accessibility, inclusion and true

citizenship for persons with disabilities in Canada.

Equality and non-discrimination, Article 5: Canada`s Constitution guarantees equality

before the law, and provincial and territorial human rights laws prohibit discrimination in

employment, services, housing and other spheres of life. Despite these legal protections,

almost 50% of discrimination complaints filed in Canada involve persons with disabilities.2

Indigenous adults and children with disabilities experience intersecting discrimination, and

often do not have access to the same supports and programs as non-Indigenous Canadians

with disabilities.

Equal Recognition Before the Law, Article 12: Canada has not withdrawn its reservation

to Article 12(4). Substitute decision-making laws continue to exist in all provinces and

territories. As a result persons with disabilities are regularly denied their right to legal

capacity. Canada should immediately withdraw its reservation, and work with provincial

and territorial governments to encourage the development of supported decision-making

regimes. Canada must ensure that adequate and culturally appropriate safeguards and

services are available to support persons with disabilities to exercise their legal capacity.

Living Independently and Being Included in the Community, Article 19: People with

disabilities still live in large institutions in several Canadian provinces, and these

institutions continue to receive new admissions. Lack of adequate services to support

independence and life in the community is a key concern for persons with disabilities in

Canada. Canada must ensure that persons with disabilities are not institutionalized. Canada

must work with the provincial and territorial governments to provide people with

disabilities the supports they need to live and participate in the community. This includes

ensuring that persons with disabilities have access to housing that is affordable and

accessible.

Education, Article 24: Students with complex disabilities who have medical needs,

students with multiple disabilities, and the majority of students with intellectual disabilities

are excluded from regular classrooms, and many only have the option of attending

segregated schools. Deaf, deaf-blind and blind students face significant barriers to accessing

education on an equal basis as students without disabilities. Several provinces and

territories encourage inclusion, but only one province has actually implemented an

2 Canadian Human Rights Commission (CHRC), The Rights of Persons with Disabilities to Equality and Non-Discrimination:

Monitoring the Implementation of the UN Convention of the Rights of Persons with Disabilities in Canada (Ottawa: CHRCH, 2015).

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inclusive education policy and invested accordingly. Given how fundamentally important

education is to the enjoyment and exercise of full citizenship, Canada should take steps to

ensure that inclusive education is implemented in all provinces and territories.

Work and Employment, Article 27: Persons with disabilities experience significantly

higher rates of unemployment than persons without disabilities in Canada. Women and

youth with disabilities, Deaf, deafened or hard of hearing persons, and blind persons have

lower rates of employment than other persons with disabilities. Racialized persons with

disabilities, new immigrants and Indigenous persons with disabilities are

disproportionately represented among those relying on precarious employment.

Segregated day programs and sheltered workshops persist as the dominant model of

support for persons with intellectual disabilities. Canada must work with provinces,

territories, unions, employers and civil society to remove existing barriers to employment.

Canada should create a national accommodation fund to ensure that employers are able to

hire persons with disabilities.

National Implementation and Monitoring, Article 33: Canada has not designated an

independent mechanism to promote, protect and monitor the implementation of the

Convention, as required by article 33.2. The Canadian Human Rights Commission, with the

appropriate mandate and resources, should be designated as the monitoring mechanism.

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A. Purpose and general obligations (Articles 1-4)

Article 4: General Obligations

Issue 2: Please inform the Committee whether the State party intends to withdraw the

reservation to article 12(4).

Details: Canada has not signalled any intention to withdraw its reservation to article 12(4).

Canada’s reservation to Article 12 is inconsistent with the UN’s General Comment No 1.

Specifically, Canada reserves the right to continue to permit substitute decision-making In

addition; many legal capacity laws use a functional test of capacity. Canada’s reservation

contradicts the object and purpose of the Convention as enshrined in Article 1 and prevents

the full application of many other Convention rights.

Legal capacity falls under provincial/territorial legislative jurisdiction in Canada Most

provinces and territories still have substitute decision-making laws.

In most provinces and territories there are many laws, policies and programs that impact

legal capacity. It is essential that Canada consider what safeguards are necessary in order to

support persons with disabilities to exercise their legal capacity, in accordance with article

12.

When considering safeguards, particular attention must be paid to the needs of children

with disabilities, indigenous persons with disabilities, persons with dementia and other

disability communities.

Indigenous persons with disabilities require culturally appropriate disability services and

supports to exercise their legal capacity. Canadian law provides that children are entitled to

make certain decisions.

Issue 3: Please indicate the steps taken towards the full harmonization of the State

party’s existing and draft legislation and relevant strategies with the obligations under

the Convention.

Details: Canada has not advanced any policies or legislation aimed specifically at

implementing or enforcing the Convention obligations. In Canada international treaties

like the Convention are not automatically incorporated into Canadian domestic law.

Although Canada has ratified the Convention, Canada has not enacted legislation to

implement the Convention into Canadian domestic law. This presents legal and practical

barriers to enforcing Convention rights in Canada. Canadian courts generally do not view

the Convention as binding law in Canada, and will not adjudicate the Convention or directly

apply any of its articles in Canadian cases. Rather, Canadian courts typically view the

Convention, and all international treaties, as sources of law, which inform the interpretation

of Canadian domestic law. Where possible, Canadian courts will interpret and apply

domestic law in a manner consistent with the Convention.3

3 R v Hape, [2007] 2 SCR 292, 2007 SCC 26 (CanLII)

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In Canada, some Convention rights, such as the right to be free from discrimination, are

legally protected and enforced by Canadian domestic law. However, other Convention

rights, such as the right to live independently and be included in the community (Art 19),

the right to adequate standard of living (Art 28), and the right to participate in cultural life

(Art 30), are not guaranteed by law or policy. Although Canadian courts can interpret and

apply domestic law in a manner consistent with the Convention, a review of existing court

and tribunal decisions demonstrate that judges and adjudicators are reluctant to consider

the values or specific obligations of the Convention when making their decisions. To date,

only 20 (meaning the court or tribunal’s decision was informed by the Convention).4. This is

a surprisingly small number, given that Canada ratified the Convention close to seven years

ago, and given that a disproportionately large number of cases before provincial/territorial

and federal human rights tribunals are complaints of disability discrimination. The cases

also demonstrate that judges will not overrule domestic legislation that explicitly conflicts

with the Convention. For example, in one case a Canadian court ruled that a father had

custody of his son with disabilities, even though the son was an adult and had asserted his

Article 12 right to legal capacity. Despite Article 12, the court found that the adult with

disabilities was a “child of the marriage” under Canada`s Divorce law.5 The failure to

implement the Convention into Canadian domestic law significantly limits harmonization of

existing Canadian law and policy with the Convention.

Issue 4: Please inform the Committee about intergovernmental bodies and other

mechanisms in place to ensure consistent implementation of the Convention at the

federal, provincial and territorial (FTP) levels.

Details: The absence of a transparent FPT coordinating mechanism regarding accessibility

causes discrepancies in legislation and policies among provinces and territories, meaning

that Canadians with disabilities experience varying levels of social inclusion depending on

where they live in the country. People with dementia often face stigmatization that can

limit their social inclusion. Living in rural and remote areas can further exacerbate the

social isolation. There is an inequitable distribution of supportive services for persons with

disabilities across provinces and territories.

A good way to address this situation would be to put in a place an FPT body on accessibility

and other issues related to disability. Such intergovernmental forums already exist in other

matters such as health and housing. If the proposed body is created, Disabled People’s

Organization (DPO) participation should be ensured. This is consistent with Articles 4(3)

and 33(3) of the Convention.

4 ARCH Disability Law Centre, Discussion Paper: Proposed Federal Accessibility Legislation and the

Convention on the Rights of Persons with Disabilities (February 8, 2017) available online:

http://www.archdisabilitylaw.ca/Discussion\_Paper\_FedAccessibilityLegislation\_CRPD

5 Cole v Cole, 2011 ONSC 4090 [Cole].

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Issue 5: Please also inform the Committee about the participation of organizations of

persons with disabilities in decision-making processes concerning legislation, public

policies and other measures, including their involvement in the preparation of the State

Party`s report.

Details: Individuals and organizations of persons with disabilities are often involved in

consultations regarding legislation and policies that will impact upon them. Federal,

Provincial and Territorial (FPT) Governments hold public consultations on new laws,

policies and programs and/or proposed changes to existing laws, policies and programs. In

many cases, however, public consultations are not meaningful and do not lead to the

adoption of community recommendations.

DPOs have been involved in the development of provincial accessibility laws in several

provinces, and more recently at the federal level. Significant criticism has been raised

regarding the extent to which processes for involving persons with disabilities were

inclusive and truly reflected of the interests of persons with disabilities.6

With regard to the preparation of the present report, a wide range of civil society

organizations were invited to comment upon a draft outline of the report at the beginning of

the process. No further public consultation took place.

Issue 6: Please give an update on the preparation of the Canadians with Disabilities

Act, including the participation of persons with disabilities in its preparation.

Details: When the current government was elected in November 2015, the Prime Minister

created a Minister of Sport and Persons with Disabilities whom he mandated to “...lead an

engagement process with provinces, territories, municipalities, and stakeholders that will

lead to the passage of a Canadians with Disabilities Act.”7

The initial consultation process was launched in July 2016 and will continue until February

2017. To date, DPOs are pleased to see that the government is seeking participation from

persons with disabilities and DPOs from all across Canada in various manners, and is

ensuring an inclusive and accessible process.8 DPOS are equally pleased to note that

funding has been allocated for their own internal consultations on the subject.

Suggested Recommendations:

• Canada should withdraw its reservation to Article 12(4).

6 See, for example, David Lepofsky, What Should the Canadians with Disabilities Act Include? A Discussion Paper (Toronto:

2016), online: The AODA Alliance,

https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwj6v9Kyn6zQAhUL7GMKHX3fDpQQFgg

pMAI&url=http%3A%2F%2Fwww.aodaalliance.org%2Fstrong-effective-aoda%2Faugust-19-2016-discussion-paper-on-a-

Canadians-with-

DisabilitiesActbyDavidLepofsky.docx&usg=AFQjCNEFpbdCH6FXWWQQS9mftN2Bs5ZkA&sig2=zv9yxqlKiNryTC7nsRy2LA, p

12-16. 7 Office of the Prime Minister of Canada, Minister of Sport and Persons with Disabilities Mandate Letter (Ottawa: Office of the

Prime Minister, 2015) online: Office of the Prime Minister <http://pm.gc.ca/eng/minister-sport-and-persons-disabilities-

mandate-letter >. 8 Employment and Social Development Canada, Consulting with Canadians on accessibility legislation (Ottawa: Government of

Canada, 2015) online: Employment and Social Development Canada

<http://www.esdc.gc.ca/en/consultations/disability/legislation/index.page?&\_ga=1.229840476.1997265178.1465577015>.

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• Canada should work with provincial and territorial governments to encourage

development of supported decision-making regimes. It should also include timelines

within which the provinces and territories agree to ensure that legal capacity laws

comply with Article 12.

• Canada must work with provincial, territorial and First Nations governments to ensure

that adequate and culturally appropriate disability services are available to safeguard

and support persons with disabilities to exercise their legal capacity.

• Canada should include conducting a comprehensive audit of federal legislation, policies

and programs that include requirements regarding legal capacity. It should also include

timelines within which the provinces and territories agree to ensure that legal capacity

laws comply with Article 12

• Canada should enact legislation that implements the Convention into Canadian domestic

law, including the legal recognition of Canada’s two official sign languages, ASL and LSQ.

B. Specific rights (Articles 5-30)

Article 5: Equality & non-discrimination

Issue 7: Please indicate whether discrimination based on “future impairment” is

covered by the Canadian Human Rights Act?

Details: The Canadian Human Rights Act likely covers “future impairment” as a prohibited

ground of discrimination. Section 25 of the Act clarifies that “disability means any previous

or existing mental or physical disability and includes disfigurement and previous or existing

dependence on alcohol or a drug”. The Canadian Human Rights Tribunal uses the common

law definition of disability articulated in Quebec v. Boisbriand (City of) (“Mercier”) to

determine whether a complainant has a disability and is protected by the Act.

The law prohibiting discrimination based on “perceived disability” is well developed.9

There is comparatively little jurisprudence on “actual or perceived future disability.” It

should be noted that little has been said about anticipated or perceived or future disabilities

that are beyond employment.

Issue 8: Please provide information on legal remedies available and used regarding

disability-based discrimination.

Details: Canada has a federal Human Rights Commission and several provincial and

territorial Human Rights Commission’s, each governed by its own Act. Canada also has a

constitutional Canadian Charter of Rights and Freedoms10 under which every ordinary court

has competency. The Charter is the supreme law of Canada and any law that is inconsistent

with it has no force or effect. Remedies for discrimination, vary accordingly with the

relevant law

9 Brideau v Air Canada, 1983 4 CHRR D/1314; Villeneuve v Bell Canada, (1984), 9 CHRR D/5093 [FCA]; Mills v VIA Rail Canada

Inc., [1996] CHRD No 7 (QL). 10 Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK),

1982, c 11.

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It is important to note that according to a recent report by Canadian Human Rights

Institutions (including federal, provincial and territorial institutions), almost 50% of all

discrimination complaints filed in Canada involve persons with disabilities.11 Moreover,

Human Rights Commissions that operate on a provincial or territorial level deal with CRPD

issues within these jurisdictions, Human Rights Codes emphasizes reasonable

accommodation in all areas to the point of undue hardship. Again, the majority of

complaints to provincial Human Rights Commissions relate to matters of discrimination

based on disability

Issue 9: Please provide updated information on the status of Bill S-201.

Details: Bill S-201 prohibits any person from requiring an individual to undergo a genetic

test or disclose the results of a genetic test as a condition of providing goods or services to,

entering into or continuing a contract or agreement with, or offering specific conditions in a

contract or agreement with, the individual. Exceptions are provided for health care

practitioners and researchers. The enactment provides individuals with other protections

related to genetic testing and test results. It should be noted here that this Bill might be

considered to have implications for Canada’s CRPD obligations under CRPD Articles 14, 17

and 22, on personal security, integrity and privacy.

The enactment amends the Canada Labour Code to protect employees from being required

to undergo or to disclose the results of a genetic test, and provides employees with other

protections related to genetic testing and test results. It also amends the Canadian Human

Rights Act to prohibit discrimination on the ground of genetic characteristics.12

Deaf people are concerned about Bill S-210 because hearing people could decide not to

continue with the pregnancy if baby is Deaf and this conflicts with Article 30 of this

Convention which stipulates support of a specific cultural and linguistic identity, including

Sign languages and Deaf culture.

Disclosure of genetic testing for dementia is discriminatory because of the future

impairment of individuals. It impacts people with dementia by denial of many types of

insurance and possible job opportunities.

Issue 10: Please elaborate on measures to eliminate multiple and intersectional

discrimination against persons with disabilities, including indigenous persons with

disabilities. Please elaborate on effective remedies and redress provided at all levels.

Details: Indigenous persons with disabilities face discrimination on multiple, intersecting

grounds; they experience higher rates of unemployment, lower rates of education, and

socio-economic marginalization in general. Due to differences in funding and provision of

services for First Nations people under the Indian Act, many indigenous Canadians with

disabilities do not have access to the same supports and programs as non-indigenous

Canadians with disabilities. In many cases, less funding is provided for services for First

11 Canadian Human Rights Commission (CHRC), The Rights of Persons with Disabilities to Equality and Non-Discrimination:

Monitoring the Implementation of the UN Convention of the Rights of Persons with Disabilities in Canada (Ottawa: CHRCH, 2015). 12 Bill S-201, An Act to prohibit and prevent genetic discrimination, 1st session, 42nd Parl, 2016. Online:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8185825> .

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Nations people for education, social services and healthcare meaning that services are often

unavailable or are of poor quality. In addition, when individuals attempt to seek services on

or off reserve, they are often the victims of jurisdictional disputes in which different levels

of government cannot agree over who will pay for the services, and this often leads to no

service provision whatsoever.

Indigenous children with disabilities are particularly vulnerable to these issues. There are

now more indigenous children in the care of Canadian welfare services than there ever

were in residential schools. Many of these children have disabilities, and they are often

removed from their homes not because of neglect but because of the lack of the appropriate

support services in indigenous communities. And, despite recent policy changes (such as

the adoption of Jordan’s Principle) and a Canadian Human Rights Tribunal decision (CRHT

T1340/7008) that were meant to address some jurisdictional issues and funding

inequalities, these barriers persist and have not yet been adequately addressed by the

Canadian government.

Deaf, deaf-blind and blind people experience discrimination on multiple grounds. Along

with this it should be noted that access to sign language interpretation and intervenor

services is still very limited in Canada, both geographically (limited to urban centers), and

for other reasons such as adequate training and availability to create equal access to public

services. In the area of health care, loved ones sometimes must still serve both as emotional

support and simultaneously as interpreter / intervenor.

Suggested Recommendations:

• Canada must fully, immediately and properly implement Jordan’s Principle,13 as

directed by the Canadian Human Rights Tribunal decision (2016 CHRT 2) and its

subsequent rulings (2016 CHRT 10 and 2016 CHRT 16), and as called for in the

unanimously passed Motion to Parliament, presented by Member Charlie Angus on

November 1, 2016.

• Canada must review Bill S-210 to ensure that it includes principles of equality and non-

discrimination apply to distinct communities, such as people who are Deaf.

Article 7: Children with Disabilities

Issue 13: Please elaborate on measures taken to assist children with disabilities to

enjoy their human rights on an equal footing with others, including specific budgetary

lines and programs in this regard.

Details: Canada has not collected data on children with disabilities since 2006. Canada`s

current data collection tool, the Canadian Survey on Disability, excludes children from birth

to age 14. Without these data, it is not possible to formulate targeted programs to address

13 Jordan's Principle is a child first principle used in Canada to resolve jurisdictional disputes within, and between

governments, regarding payment for government services provided to First Nations children. Retrieved from

https://en.wikipedia.org/wiki/Jordan's\_Principle

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and improve the situation of children with disabilities in Canada. There is a need for more

metrics on disabled children and their families, to identify their needs and areas of disparity

across the country. Children with disabilities have the right to preserve their identities and

culture. This includes the Deaf identity and Deaf children have a right to Deaf culture, and

especially sign language.

Children with disabilities experience similar challenges as adults in terms of inclusion,

integration, participation, and accessing other human rights, but experience added barriers,

as they often do not have a voice in matters that affect them. Children with disabilities are

not consulted in decision-making or in determining what is in the ‘best interest of the child.’

Children, of varying disability types and severities, are frequently not represented in

advocacy, policy or service delivery.

There is significant variation in the provision of services in different sectors (e.g. health,

education, social, and community/recreational) that support families of children with

disabilities across provinces and territories, indigenous children in and off reserve, and

children living in rural and urban areas.14 This results in gross inequities in the availability

and access to supportive services and intensive interventions across the country, depending

on geographical location.

Measures taken to assist in providing supportive services to ensure children with

disabilities enjoy their human rights on equal footing with peers include evidence-based

lobbying that supports resource investment in intensive therapies and supports.

Participation in sports and physical activities is crucial for the physical and mental health

and development of children with disabilities and for them to enjoy their rights.15 It is well

documented that children and youth with disabilities experience barriers to participation in

sports, social and other leisure activities of their choosing. National programs16 such as

ParticipAction and Sports for Life are now receiving supports from non-governmental

sources to adapt and include children with disabilities of all severities and types. Families of

children with disabilities are largely unsupported. They need to have access to system

navigators to access supports needed the realize the rights of their children

When addressing the needs of children with disabilities, society needs to address the

challenges faced by family caregivers. There is mounting evidence17 that reveals that the

burden of care overwhelmingly falls on family members (usually women) rather than the

state. This has been especially prevalent among women. In support of Article 6, appropriate

caregiver support must be provided to caregivers, in order to minimize the mental and

physical effect on caregivers, which at times results in their eventual disability as well.

Given the opportunity cost (i.e. reduced hours of paid work) family caregivers experience,

particular budgetary lines to consider could include respite care, intermittent leave to bring

child to appointments, tax breaks and caregiver income.

Suggested Recommendations:

14 The Jordan’s Principle Working Group (2015) Without denial, delay, or disruption:

Ensuring First Nations children’s access to equitable services through Jordan’s Principle. Ottawa, ON: Assembly of First

Nations.

15 Dahan-Oliel, N., Shikako-Thomas, K., & Majnemer, A. (2012). Quality of life and leisure participation in children with

neurodevelopmental disabilities: A thematic analysis of the literature. Quality of Life Research, 21(3), 427-439. Retrieved from

http://www.jstor.org/stable/41445069

16 Shikako-Thomas K, Shevell M, Lach L, Law M, Schmitz N, Poulin C, Majnemer A and the QUALA group. Are you doing what

you want do? Leisure preferences of adolescents with cerebral palsy, Developmental Neurorehabilitation, 18: 234-240, (2015). 17 Ibid. (Raina, P., et al. (2004). Caregiving process and caregiver burden: conceptual models to guide research and practice.

BMC pediatrics, 4(1), 1

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• Canada should consider the collection of data concerning children with disabilities and

their families to address the existing data gap to ensure evidence-based decisions on

policies, programs and services to best meet the needs of this population and their

families.

• Canada should develop navigator systems to support families accessing services and

resources and give families autonomy to decide how they want to spend funds related to

their child.

• Canada should increase its capacity to support services on reserves and in rural

communities to address the needs of children with disabilities.

• Canada should develop mechanisms to share success stories and models across provinces

to equalize the provision of services, including transition to adult services, across the

country that supports full integration and participation.

• Canada should, include the needs of children with disabilities in leisure, sports, parks and

recreation, and community development that focus on participation in leisure.

• Canada must establish a benchmark for language equality and acquisition of Sign language

with a view to ending language deprivation.

Article 9: Accessibility

Issue 15: Please elaborate on measures to monitor the implementation of accessibility

measures in all areas of the Convention and sanctions in case of lack of compliance with

accessibility requirements.

Details: Canada currently has no formal mechanisms to specifically ensure that Convention

accessibility rights are implemented and enforced in all jurisdictions. Federally, however,

Canada is currently conducting consultations in preparation for a National Accessibility Act.

It is imperative that the outcomes from these consultations result in a national act is both

consistent with the CRPD and enforceable in order to provide Canadians with disabilities

with the tools they need to address discrimination.

At the same time, several Provinces, including British Columbia, Saskatchewan, Nova Scotia

and Newfoundland, have announced a plan to enact, accessibility legislation or policies,

while Ontario and Manitoba already have such legislation. Existing Provincial accessibility

laws have been widely criticized. Existing provincial accessibility laws do not address all

aspects of accessibility elaborated by Article 9. For example, people with dementia are

routinely denied accessibility because measurement is focused on physical limitations and

not cognitive impairments. Provincial accessibility laws and governments have been

criticized for failing to appropriately enforce accessibility requirements. In Ontario, for

example, 2 independent reviews of Ontario`s accessibility legislation have found significant

lack of enforcement.18

With emerging technology and particularly the proliferation of non-audible information

systems in public spaces, many new barriers are being created for Canadians unable to read

or comprehend signs and print information. For example, on most aircraft call buttons have

18 Mayo Moran, Second Legislative Review of the Accessibility for Ontarians with Disabilities Act, 2005,

(November 2014) online at: https://dr6j45jk9xcmk.cloudfront.net/documents/4019/final-report-

second-legislative-review-of-aoda.pdf

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been moved from above a client's seat to an inaccessible touch screen. Equally most pre-

boarding information is presented audibly over public address systems.

“(A)ppropriate measures” as elaborated by Article 9 include the “elimination of obstacles

and barriers” to ensure equal access. For people who are Deaf, deaf-blind and blind this is

important for a range of accessibility services including transportation, information and

communication, and emergency services. Currently people who are Deaf, deaf-blind and

blind do not have equal access to these accessibility services because there are still many

barriers that cause on-going social exclusion and access issues.

There are inaccessible communication systems in transportation facilities that create

barriers where Deaf people are not able to receive the communications and information

services such as at the Canadian airports regarding any flight changes or any updates on the

announcement from the airlines regarding the travel status. Also, lack of closed captioning

for the entertainment and emergency information during their flight in Canada is a denial of

equality rights. There are also inaccessible communications systems in transportation for

people who are blind. Entertainment systems do not provide descriptive video and the

emergency call button is placed on an inaccessible touch screen. For people who are blind,

entertainment systems...

Deaf people report experiencing difficulties using texting with "911" for emergency

services.

Canada’s State Report indicates that it requires broadcasters to caption 100 percent of their

programming and imposes quality standards for closed captioning. However, Canada has

still not attained the objective of fully captioned programming. There are still issues on

French-language captioning because it has always behind English-language captioning in its

development. Also, there are accessibility issues where Deaf people are not able to access

to online captioning content on the website and social media.

This is also a concern for people who are blind with a lack of descriptive video services

provided by Canadian broadcasters. The Canadian Radio and Television Commission,

(CRTC) has an extensive body of policy and guidelines that have been developed in

consultation with industry and civil society, including Canada’s disability community. The

CRTC also provides licenses for all Canadian broadcasters. In theory failure to meet

guidelines (including guidelines on access) can result in the denial of a license. However, in

practice failure to comply with CRTC access guidelines does not result in license denial.

Treasury Board of Canada has developed a new ‘Web Accessibility Standard’ (WAS) to

replace their ‘Common Look and Feel’ standard for all federal government websites. The

WAS is in compliance with the current WCAG AA level of website accessibility conformance.

The majority of the government’s web pages are in compliance with these guidelines.

The Marrakesh Treaty is a legal accord that aspires to end the "book famine" for those who

are blind, partially sighted or otherwise have a print disability, worldwide. Canada’s

leadership helped ensure this groundbreaking Treaty came into full force, September 30,

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2016. The Treaty allows signatory states to import and export alternative format print

materials without infringing on copyright.

Suggested Recommendations:

• Canada should work with provincial and territorial governments to review existing and

planned accessibility laws and policies to ensure that they address accessibility in a

comprehensive manner and that they comply fully with Article 9.

• Canada should incorporate or adopt Article 9 of the CRPD when developing National

Accessibility Legislation, and should give due consideration to the CRPD Committee’s

General Comment No. 2 on Accessibility.

• Canada must ensure that all levels of Government commit to robust enforcement of

accessibility requirements enshrined in Law.

• Canada must ensure that communications and information services on the

transportation systems are designed and constructed so that they can be used, or

reached by people who are Deaf, deaf-blind or blind.

• Canada must address to improve accessibility on telecommunication services for Text

with 911 services that requires a faster response time between 9-1-1 responders and

Deaf person in order to meet the functional equivalency.

• Canada must ensure that broadcasters are required 1) to provide French-language

audiences with access to captioned programming that is fully equal to English-language

access in both quantity and quality; 2) online captioning and descriptive video content

for the website and social media; and 3) improve quality standards and to provide

captioning and descriptive video for 100 percent of their programming.

• Canada must strengthen the mandate of regulatory bodies to allow for license denial in

the event of non-compliance with accessibility standards and guidelines.

Article 10: Right to Life

Issue 16: Please inform the Committee about measures to ensure that the State party’s

legislation on assisted dying is in compliance with the Convention.

On June 17, 2016, the Government of Canada amended the Criminal Code to permit Medical

Assistance in Dying (MAiD). The legislative purposes of this new law are set out clearly in its

preamble. Central to the law is the fundamental principle that “vulnerable persons must be

protected from being induced, in moments of weakness, to end their lives“19.

While the reassuring declarations of the preamble are consistent with the spirit of Article

10, the present situation with regard to MAiD in Canada falls far short of the law’s rhetorical

commitments. While the law prescribes certain procedural and eligibility safeguards, and

authorizes the Minister of Health to make regulations “for the purpose of monitoring

medical assistance in dying”, no such regulations exist. As a result, no data are available to

19 Ibid., Preamble.

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assure compliance with the spirit of this law or to support civil society engagement with

and monitoring of this practice. Moreover, no complementary programming has been

undertaken at the federal, provincial or territorial levels to address vulnerability or

inducement, or to ensure that all Canadians have access to palliative care, disability

supports, home care and other measures that would ease suffering, boost resilience and

offer meaningful choices other than assisted death. . Finally, where safeguards have been

breached,20 no action has been taken to prevent ineligible people from being euthanized.

At present, there is no coordinated record keeping supporting federal oversight of the

practice. Decision-making protocols, assessment procedures and guidelines for assisted

dying are inconsistent across the country and within individual provincial/territorial

jurisdictions. There is no systematic approach to assessing vulnerability, inducement or

coercion, although the law requires that requests be “not made as a result of external

pressure”.21 In the absence of federal regulations, individual Colleges of Physicians and

Surgeons oversee MAiD through whatever practice guidelines these self-regulating bodies

choose to adopt. This patchwork of largely unregulated arrangements risks producing lethal

outcomes that falls disproportionately on people with disabilities.

Of equal concern, the law’s most important substantive safeguard – that a person’s natural

death must be “reasonably foreseeable” – leaves considerable scope for individual physician

discretion. A patient who is denied access to an assisted death by a physician, who does not

consider that patient eligible, may continue to seek out a more sympathetic physician

willing to interpret the threshold of “reasonably foreseeable natural death” more liberally.

Without data to track requests and the reasoning for their denial or granting, it is

impossible to know the extent to which “negative perceptions of the quality of life”22 of

disabled persons factor in calculations of eligibility. Without data to monitor how requests

for MAiD are received and negotiated with health practitioners, the risk is high that

disability stigma, stereotypes and prejudice are factoring heavily in MAiD decision-making

and practice.

Recent research from other jurisdictions shows that women with psychosocial disabilities

are using the system to die at a disproportionate rate.23 As well, people with autism

spectrum disorder and intellectual disabilities are accessing the system with alarming

frequency.24

Communication is fundamental to the negotiation around assisted death. With nearly 400

Canadians now reported25 as having died by MAiD and with no descriptive data available or

likely to be available in the foreseeable future, it is impossible to know the extent to which

20 http://www.ledevoir.com/documents/pdf/rapport\_csfv2016.pdf p. 19

21 Act, supra note 2, s 241.2 (1)(d).

22 Act, supra note 1.

23 Scott Y.H. Kim et al, “Euthanasia and Assisted Suicide of Patients with Psychiatric Disorders in the Netherlands 2011 to

2014” (2016) 73:4 JAMA Psychiatry 362-368.

24 Ibid.

25 See Kelly Grant, "Incomplete stats paint fuzzy picture of assisted-death impact in Canada", Globe and Mail, (6 October 2016),

online: <http://www.theglobeandmail.com/news/national/despite-assisted-dying-law-barriers-still-remain-doctors-

say/article32286253/> and subsequent data from Nova Scotia and New Brunswick in Jack Julian, "Nova Scotia Health

Authority reveals assisted-dying numbers", CBC News, (9 November 2016), online: <http://www.cbc.ca/news/canada/nova-

scotia/nova-scotia-health-authority-assisted-dying-numbers-1.3843758>.

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lack of access to qualified interpreter services may be a factor in any of these and future

deaths.

Suicide rates among Canada’s indigenous peoples are known to be at catastrophic levels,

especially among youth26. Although the preamble to Canada’s law acknowledges that

“suicide is a significant public health issue that can have lasting and harmful effects on

individuals, families and communities”27, without adequate screening or reporting

mechanisms in place, the personal and cultural impacts of Canada’s permissive approach to

medical assistance in dying with regard to indigenous persons with disabilities remains

unknown.

By failing to address the relationship between unmet need, social stigma and suicidal desire

among persons with disabilities, and by providing assisted death in response to intolerable

suffering at end-of-life, whatever its source, Canada is failing to meet its obligations under

Article 10 to take “all necessary measures” to ensure effective enjoyment by persons with

disabilities of the right to life on an equal basis with others.

Suggested recommendations:

• Canada must ensure that all persons who might seek an assisted death have access to

alternative courses of action and to a dignified life made possible with appropriate

palliative care, disability supports, home care and other social measures that support

human flourishing.

• Canada must move quickly to establish regulations pursuant to the law requiring

collection and reporting of detailed information about each request and intervention for

Medical Assistance in Dying.

• Canada must ensure that these data are “anonymized” and made publicly available in a

timely manner and in formats that are accessible to laypersons and useful for

researchers.

• Canada must ensure that representatives of Canada’s disability community play an

integral role in the development and evaluation of the database.

• Canada must develop and implement a clear standard for informed consent in either the

federal statute or regulations, pursuant to the existing eligibility criterion that a person

must not be subject to “external pressure.”28

• Canada must develop an effective and independent mechanism to ensure that

compliance with the law and regulations are strictly enforced, that violations are

punished, and that problems are corrected.

• Consistent with Concluding Observations issued by the United Nations Human Rights

Committee in respect of assuring protection for the right to life for vulnerable persons

under the system in the Netherlands, Canada should require prior review of each request

by an independent authority in order to “guarantee that this decision was not the subject

of undue influence or misapprehension.”29

26 Health Canada, First Nations & Inuit Health, (Ottawa: Health Canada, 2016) online: <http://www.hc-sc.gc.ca/fniah-

spnia/promotion/suicide/index-eng.php>.

27 Act, supra, note 2, preamble.

28 Act, supra note 2, s 241.1(2)(d).

29 U.N. Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, para. 7,

U.N. DOC. CCPR/C/NLD/CO/4 (Aug. 25, 2009). See also U.N. Human Rights Committee, Concluding Observations of the Human

Rights Committee: Netherlands, para. 5–6, U.N. DOC. CCPR/CO/72/NET (Aug. 27, 2001).

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• Canada must ensure that all persons who might seek an assisted death have access to

alternative courses of action and to a dignified life made possible with appropriate

palliative care, disability supports, home care and other social measures that support

human flourishing.

• Canada should limit the expansion of MAiD in order to protect people with psychosocial

disabilities, children with disabilities and people with dementia from being specifically

targeted for assisted suicide and euthanasia.

Article 12: Equal recognition before the Law

Issue 18: Please inform the Committee about the number of adult persons with

disabilities, at the federal, provincial and territorial levels, who are under

guardianship or a similar regime of substituted decision-making. Since 2010, what

kinds of decisions have been made on behalf of persons with disabilities (e.g. medical

treatment, financial affairs, housing and contracts)? How many persons with

disabilities receive supported decision-making services? Have there been any decreases

in substitute decision-making since 2010? Are there any innovative projects or research

planned in this regard?

Presently there is no publicly available data on the number of persons with disabilities who

are under a substitute decision-making regime. There is also no publicly available data on

the number of persons with disabilities who are in supported decision-making situations.

The lack of publicly available data is a barrier to DPOs and the public who want to conduct

research and analysis on decision-making practices in Canada.

Provisions exist in all provincial/territorial jurisdictions for substitute decision-making

either through guardianship or through informal appointment of substitute decision makers

for health care decisions. These provisions are regularly used across Canada with the

consequence of denying people with disabilities, including people with a medical diagnosis

of dementia, the right to legal capacity.

Federally, Canada requires under its Income Tax Act that otherwise eligible persons with

severe disabilities be “contractually capable” to open a registered disability savings plan

and take advantage of significant government contributions. This is an important vehicle for

future financial security for persons with disabilities. However, this provision is

significantly undersubscribed because many individuals are not considered legally capable

by financial institutions, and their family members are not willing to have them declared

incapable and open a plan on their behalf.

Suggested recommendations:

• In order to ensure that it is meeting its obligations under article 12, Canada must

actively collect data on the number of persons with disabilities who are subject to

substitute or supported decision-making regimes.

• In order to advance the monitoring and implementation of article 12, Canada must

ensure that data about the number of persons with disabilities who are subject to

substitute or supported decision-making is made available to the public.

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• Canada should remove the criterion for ‘contractual capacity’ in the Income Tax Act for

the purposes of the registered disability savings plan, and make provision in the Act for

persons to open such plans through a supported decision making arrangement.

• Canada should convene Ministers of Justice from its respective provincial/territorial

jurisdictions to develop a shared agenda for reform of substitute decision making laws,

that would be guided by the following principles and directions for reform:

Article 14: Liberty and Security of the Person

Issue 21: Please inform the Committee about the number of criminally accused persons

with disabilities who have been declared incompetent to stand trial and/or

incompetent to be guilty since 2010. What measures are taken in regard to those

persons with disabilities? Are these individuals transferred to and/or detained in

forensic psychiatric institutions? Please clarify whether in regard to criminal

procedure they have the same rights as defendants such as right to information or

judicial review.

Details: Persons who are found not criminally responsible on account of mental disorder

(NCR) are typically sent to a provincial or territorial Review Board.30 Review Boards are

tribunals comprised of at least 4 members, including a judge and a psychiatrist. The Review

Board may order an absolute discharge, a conditional discharge or detention in custody in a

hospital.31 The Board must order the disposition that is the least restrictive to the accused

person. The Board must balance protecting the public from dangerous persons, the mental

condition of the accused person, and reintegration of the accused into society and any other

needs of the accused. 32 A conditional discharge means the person is in the community but

has restrictions on his/her liberty such as residing in a particular place, not using illegal

drugs or alcohol, submitting to urine testing, abiding by a specific treatment plan, or

reporting to a psychiatrist regularly.

Persons who are found unfit to stand trial are also sent to a provincial or territorial Review

Board for a disposition hearing. The Review Board may order a conditional discharge or

detention in custody in hospital. The Board may not order an absolute discharge. If the

accused person becomes fit to stand trial, s/he returns to court for a trial.

Review Boards must hold a hearing each year to review the disposition.33 In most provinces

and territories there is a right to appeal a Review Board’s disposition to a court.

Issue 22: Please inform the Committee whether the federal and provincial legislation,

including the Charter of Rights and Freedoms, the Criminal Code and legislation in the

area of mental health, provide effective protection against arbitrary detention of

persons with disabilities at the federal, provincial and territorial levels. In this regard,

30 Criminal Code, RSC 1985, c C-46, s 672.38 31 Criminal Code, RSC 1985, c C-46, s 672.54 32 The Supreme Court of Canada, in Winko v. British Columbia (Forensic Psychiatric Institute), [1999] 2 SCR 625, 1999 CanLII 694

(SCC), provided guidance on section 672.54 and ruled that if the accused does not pose a significant threat to the safety of the

public, the court or Review Board must order an absolute discharge. The Court found that while the protection of society is

paramount, there must be clear evidence of a significant risk to the public before a court or Review Board can impose a

conditional discharge or detention order.

33 Criminal Code, RSC 1985, c C-46, s 672.81

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please also inform the Committee about the measures taken towards abolishing the

practice of indefinitely detaining persons with disabilities, especially with intellectual

and/or psychosocial disabilities who, based on their impairment, are found to be “unfit

for trial”.

Details: Most provinces and territories in Canada have laws that permit involuntary

detention of persons with psychosocial disabilities in psychiatric institutions and/or

coercive administration of psychiatric drugs.34

A recent decision of the Court of Appeal for Ontario, Thompson and Empowerment Council v.

Ontario, found that involuntary detention in hospital due to “substantial mental

deterioration” and coercive administration of psychiatric drugs did not violate the right to

liberty and security of the person under Canada’s Charter, nor did it violate the right to

equality guaranteed by Canada’s Charter.35 Although article 14 of the Convention was

raised, the Court of Appeal did not discuss it in the decision.

Issue 23: Please provide information about the number of persons with disabilities who

have been detained since 2010 on the grounds of impairment (disaggregated by

gender, age and ethnicity). Has the number decreased or increased since the

ratification of the Convention?

Details: We are still seeking a data source.

Issue 24: Please also provide information about the number of persons with disabilities

in prison and how many of them are provided with reasonable accommodation.

Details: Correctional Services Canada [CSC] provides statistics on the prevalence of some

disabilities among prisoners in federal prisons. The CSC’s Departmental Performance

Report in 2012-2013 reports 15,056 offenders in federal custody, regardless of disability

status and including temporary detainees.36 Between 2008-2014, the number of people in

federal prisons increased.37 Between 2014 and 2015 there was a 3% decrease in the

federal in-custody population.38 The number of people in provincial/ territorial prisons

increased 13.4% from 2004-2012.39 From 2012 to 2014 this number decreased 11.2% to

9,889 people.40 In 2014/2015 the proportion of prisoners in federal custody was about

10.5% greater for Indigenous prisoners than for non-Indigenous prisoners.41

A report on the mental health needs of federal women offenders indicated that 94% of

women offenders sampled had experienced symptoms consistent with a lifetime diagnosis

34 See for example, section 15 of Ontario’s Mental Health Act, RSO 1990, c M.7. 35 2013 ONSC 5392 (CanLII) 36 Correctional Service Canada, 2012-13 Departmental Performance Report (2013) online: http://www.csc-

scc.gc.ca/publications/005007-4500-2012-2013-eng.shtml 37 Public Safety Canada, 2014 Annual Report Corrections and Conditional Release Statistical Overview (2015) online:

https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2014/index-en.aspx 38 Public Safety Canada, 2015 Annual Report Corrections and Conditional Release Statistical Overview (2016) online:

https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2015/index-en.aspx#c 39 Public Safety Canada, 2014 Annual Report Corrections and Conditional Release Statistical Overview (2015) online:

https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2014/index-en.aspx 40 Public Safety Canada, 2015 Annual Report Corrections and Conditional Release Statistical Overview (2016) online:

https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2015/index-en.aspx#c 41 Public Safety Canada, 2015 Annual Report Corrections and Conditional Release Statistical Overview (2016) online:

https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2015/index-en.aspx#c

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of a psychosocial disability.42 80% of the sample had experienced a lifetime dependence on

at least one substance.43 The CSC elsewhere reports that 13% of men and 24% of women

offenders in custody are identified with “very serious mental health problems.”44 No

information was found on the number of prisoners who are blind, Deaf, or hard of hearing.

Many prisoners with disabilities, including incarcerated women with psychosocial

disabilities, brain injuries and intellectual disabilities are not given appropriate care or

disability supports, and are instead placed in solitary confinement.45 Solitary confinement is

very prevalent in the Canadian correctional system, especially at the federal level. Indeed, in

its recent review of Canada, the CESCR committee stated that it is concerned by the

increased rate of incarceration of persons with disabilities and the excessive use of solitary

confinement.46 Solitary confinement is often imposed for non-disciplinary reasons such as

protection of an inmate or medical reasons. A review by the Ontario Ministry of Community

Safety and Correctional Services47 found that only 4.3% of all prisoner placements into

solitary confinement were disciplinary, while 17% were for “administrative” medical

reasons. Of the 4,178 inmates who spent at least a day in solitary confinement between

October and December 2015, 38.2% had a “mental health alert” on file. Despite UN

standards that deem solitary confinement longer than 15 days to be tantamount to torture,

the review found that the average time spent in solitary confinement reached 16.2 days.

Research has documented that women with disabilities in federal prisons are subject to a

mental health strategy that is overly focused on assessment rather than treatment and

security classification that lead to women with mental health issues and Aboriginal women

being housed in more secure environments than required to manage their risk. It has also

been documented that staff in federal prisons are authorized to use force against women

with serious mental health issues without regard for the woman`s underlying health

concerns. In addition, concern has been expressed about care and support for persons with

dementia in the Prison system.

A 2013 Alberta court case, R v. Myette48, exposed the lack of appropriate disability

accommodations for blind prisoners. The provincial prison had no policy regarding

42 Correctional Service Canada, Mental health needs of federal women offenders (2012) online: http://www.csc-

scc.gc.ca/research/005008-0267-eng.shtml 43 Correctional Service Canada, Mental health needs of federal women offenders (2012) online: http://www.csc-

scc.gc.ca/research/005008-0267-eng.shtml 44 Correctional Service Canada, Profile of a Canadian Offender (2010) online: http://www.csc-scc.gc.ca/publications/005007-

3004-eng.shtml 45 There are several recent examples of women with disabilities who have died in solitary confinement. In 2013, Kinew James,

a 35-year old indigenous woman who was diabetic and had psychosocial disabilities died from an apparent heart attack.

During her nearly 15 year prison sentence, she had been transferred from one prison to another and spent months at a time in

solitary confinement. An inquest into her death is ongoing. In 2007, Ashley Smith was 19 years old when she died by self-

inflicted strangulation while she was incarcerated at the Grand Valley Institution for Women, a federal prison. Smith had

psychosocial disabilities and was under suicide watch at the time of her death. In 2013 a coroner’s inquest found her death to

be a homicide and made dozens of recommendations for improving the care, support and treatment provided to incarcerated

persons with psychosocial disabilities. See: Smith (Re), 2013 CanLII92762 (ON OCCO). In 2001, Kimberly Rogers died while

she was alone under house arrest for welfare fraud. Rogers had received government loans to pay for her education while also

receiving welfare payments. Rogers had psychosocial disabilities. A coroner’s inquest made a number of recommendations

aimed at ensuring that persons under house arrest have adequate access to food, shelter and medication. Before her death,

Rogers brought a number of court cases against Ontario. See: Rogers v. Sudbury (Administrator of Ontario Works), 2001 CanLII

28086 (ON SC) 46 See UN Document E/C.12/CAN/CO/6, point 45. 47 Indirectly through statistics reported by Jim Rankin, “Inmate in solitary for four years alarms rights commission”, The

Toronto Star (October 19, 2016) online: https://www.thestar.com/news/canada/2016/10/19/inmate-in-solitary-for-four-

years-alarms-rights-commission.html; The full report is available on request from the Ontario Ministry of Community Safety

and Correctional Services: http://www.mcscs.jus.gov.on.ca/english/default.html. 48 2013 ABCA 371 (CanLII)

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accommodations for blind prisoners, no staff training on accommodating blind prisoners,

prison rules and computers were not accessible, nor were guide dogs permitted in the

prison.

Similarly, Deaf people who are in prison report a lack of Sign language interpreters making

communication with other prisoners and staff very difficult or impossible. As well, Deaf

prisoners do not enjoy equal access to any programs and elements of daily existence in

prisons.

Suggested Recommendations:

• Canada must take steps, at all levels, to review laws, policies and practices that permit

involuntary detention of persons with psychosocial disabilities and coercive

administration of psychiatric drugs. Such laws, policies and practices must be amended

in order to comply fully with Article 14.

• Canada, at all governmental levels, must review the use of solitary confinement and put

in place policies and training to reduce the use of solitary confinement and ensure that

solitary confinement is not used in a discriminatory manner.

• Canada must ensure that policies, practices and training support the provision of

appropriate accommodation, services and supports to prisoners with disabilities, in

both provincial and federal institutions.

Article 16: Freedom for exploitation, violence and abuse

Issue 25: Please inform the Committee about the existence of a monitoring system in

line with article 16(3) at the federal, provincial and territorial levels.

Details: There are no independent entities responsible of monitoring the access to facilities

and programs that aims at preventing exploitation, violence and abuse of persons with

disabilities. Both federal and provincial/territorial governments have disability offices, but

those are governmental offices, not independent as mandated by Article 16(3).

This is a concern, especially considering that person with disabilities, women in particular,

are at greater risk of experiencing violence than are their able-bodied peers. The lack of

publicly funded legal assistance (legal aid), support and representation for disabled women

to access their rights keeps women with disabilities in poverty and prevents them from

accessing the supports and services they need to survive. It also keeps them in abusive

situations by failing to provide legal protection needed to escape abuse.

Instead of a monitoring process, some provinces, like Quebec, have specific legal protection

against abuse of persons with disabilities 49 that gives recourse against such practices.

Issue 26: Please inform the Committee about violence against women and children with

disabilities, including indigenous women and children with disabilities, and about

measures to prevent and eliminate all forms of violence in different settings, including

at school, and to facilitate reporting of violence by victims. Please also indicate the

49 Charte des droits et libertés de la personne, 1975 L.R.Q. c.C-12, art.48.

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steps taken to implement the recommendations of the Truth and Reconciliation

Commission and to repeal section 43 of the Penal Code.

Women with disabilities are at greater risk of experiencing violence and bullying than are

their able-bodied peers. The lack of publicly funded legal assistance (legal aid), support and

representation for disabled women to access their rights keeps women with disabilities in

poverty and prevents them from accessing the supports and services they need to survive.

It also keeps them in abusive situations by failing to provide the necessary legal protection

needed to escape abuse.

It has also been reported that women with disabilities who experience violence and sexual

assault often have to remain living with the perpetrator as many shelters are inaccessible

and support service such as attendant care is not always available. 50

Suggested recommendations

• Canada must take steps to establish an independent mechanism at all levels to monitor

facilities and programs provided to persons with disabilities. This mechanism should

place priority on women and children with disabilities.

• Canada must work with Indigenous leaders to establish a parallel mechanism in First

Nations communities across the country.

• Canada must ensure that victims of violence have access to both appropriate legal

assistance and fully accessible emergency shelters.

Article 19: Living independently and being included in the community

Issue 31. Please indicate how many children and adults with disabilities live in

residential institutions and how large these institutions are. Has the number of persons

with disabilities in institutions decreased or increased since 2010, including at the

federal, provincial and territorial levels?

Details: According to the 2011 Census of Population, there were 448,735 Canadians living

health-related institutions or group homes representing 1.3% of the population. This

number has increased from 381,145 or 1.2% as recorded in the 2006 Census of Population.

While no data are available on the nature and extent of disability experienced by these

residents, it can be assumed that some level of care was required on a daily basis and that

they had to move into care to obtain the daily supports that were needed. While the

majority of institutional residents are aged 75 years and over, there were 3,100 children

under the age of 15 years, 77,130 adults aged 15 to 64 years and 43,805 adults aged 65 to

74 years (Statistics Canada).

While changes in health care in Canada have included a shift toward more community

services, it is estimated that 71 percent of people with dementia live in institutions such as

50 While there is growing literature pertaining to violence toward women and girls with disabilities, there is little research into

the role of violence as a causal factor in a) physical, mental and cognitive impairment and other disabilities for women and

girls; b) as a contributing factor to additional and or increased impairments to women and girls with pre-existing disabilities;

c) violence toward women earlier in their lives may be a causal factor for the onset of later life impairments such dementia and

related disorders. (Ford, Hanes, March in M. Owens et.al., 201

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nursing homes or long-term care facilities. Many are inappropriately segregated in locked

wards that are often used to isolate people with dementia from their communities.51

Issue 32. What is the public budget spent on community-based services for independent

living as opposed to residential services? Please inform the Committee about measures

towards deinstitutionalization and the provision of community-based living

arrangements since 2010. How many persons with disabilities receive independent

living support, including personal assistance services? Please provide data

disaggregated by sex, age and ethnic background at all levels.

Details: At present we are not able to locate National-level data, but some provinces have

reported the following: In 2010, Manitoba, Saskatchewan and Alberta (three of thirteen)

Provincial and Territorial jurisdictions reported approximately 900 Canadians were still

institutionalized in three large (100 or more beds) provincial institutions designated for

people with intellectual disabilities.

In 2012, it was announced Saskatchewan would close in 2016, and that date was then

moved to 2018. In 2013, there were 197 residents living in the Centre, with an average age

of 59, by December of 2016 the Centre reported a reduced number (124) of residents.

In 2013, it was announced the Alberta residential centre would close, but with a 2014

change in government plans for closure have come to a halt, and in December of 2015 there

were still 227 residents in the Centre.

In 2015 Manitoba reported that at one time the Manitoba Development Centre [MDC}

provided care for over 1,000 residents, but it presently provides care to approximately 180

residents and work is underway to transition another 10 residents to community

placements within the next year.52

In December 2014, the Ontario Ministry of Community and Social Services determined that

of the 33,615 adults receiving some form of developmental services, 15,246 were receiving

residential services, with almost as many on waitlists. In March 2012, there were 10,900

people on waitlists for some form of residential services. By April 1, 2014, that number had

grown to 12,808.53

Research from Disability Rights Promotion International (DRPI) with individuals with

disabilities across Canada indicates that support within the community and the social

participation that results from such support is the primary areas of concern for individuals

with disabilities throughout the nation. The lack of accessibility and of adequate supports

for community living and social participation meant individuals experienced a lack of

dignity and lack of autonomy – two key guiding principles of the CRPD.54

51 Prevalence and Monetary Costs of Dementia in Canada, Alzheimer Society of Canada, 2016 , the full report is online at

http://www.alzheimer.ca/~/media/Files/national/Statistics/PrevalenceandCostsofDementia\_EN.pdf 52 About the Manitoba Development Centre: https://www.gov.mb.ca/fs/mdc/index.html 53 Dubé, Paul (2016). Nowhere To Turn. Toronto, ON: Ombudsman Ontario:

https://www.ombudsman.on.ca/Files/sitemedia/Documents/NTT-Final-EN-w-cover.pdf 54 DRPI Canada: http://drpi.research.yorku.ca/north-america/north-america-publications-resources/

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Suggested recommendations:

• Canada must ensure that people with disabilities are not institutionalized, and that all

large institutions make plans to close and accept no new admissions.

• Canada must work with the provinces and territories to ensure the people with

disabilities are provided with the supports needed to live independently in the

community

• Canada should incorporate measures in its National Housing Strategy announced in

2016 to ensure financing is available to ensure access to affordable and accessible

housing for Canadians with disabilities

• Canada should incorporate measures, in collaboration with provinces and territories, to

ensure that the financing announced by Canada for home care, is delivered in a manner

consistent with Article 19, respecting individualization, community-based supports,

self-direction, and supports for inclusion.

• Canada should work with provinces and territories to implement the proposals put

forward by DPOs and recognized in Parliamentary reports for a basic income program

financed by the federal government to address poverty of persons with disabilities, and

thereby creating fiscal room for provinces and territories to increase investment in

disability supports, which largely fall under their jurisdiction.

Article 24: Education

Issue 35: Please give an update about learners with disabilities who receive education

in segregated settings as opposed to learners with disabilities who are in mainstream

settings, across each of the provinces and territories.

Details: K-12 education is under provincial/territorial jurisdiction exclusively, and no

national comparable data on inclusive education is collected or available.

The vast majority of students with intellectual disabilities are still largely excluded from the

common learning environment in the education system. There is no national-level

comparable data, the 2010 data (latest readily available) from Ontario, the largest

provincial jurisdiction, and points to violation of the right to inclusive education on a

massive scale. Seventy-six percent (76%) of primary school students with intellectual

disabilities spend the majority of their day in segregated classrooms, and at the secondary

level the figure is even higher at 87%.

There is significant variation across provinces in terms of service provision for learners

with disabilities. Children with disabilities in Quebec, for example, are often placed in

segregated schools and only children with mild disabilities are integrated into regular

settings55. According to the 2001 Participation and Activity Limitation Survey (PALS): “The

proportion of 5 to 14 year-old students with disabilities who were in regular classes (that is,

not in special education classes or schools) was highest in Prince Edward Island (73%),

New Brunswick (72%) and Nova Scotia (67%), and lowest in Quebec (48%) and British

Columbia (51%).

55 http://www.statcan.gc.ca/pub/81-004-x/2007001/9631-eng.htm

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The percentage of students in regular classes in the other provinces was close to the

national average (59%). In all provinces, most of the children with reported disabilities who

were not in regular classes attended some special education classes or went to a special

education school56,

57.”

Moreover, children with complex disabilities who require some medical attention, or

children with multiple disabilities (e.g. intellectual and physical) only have the option of

segregated school settings, making their neighborhood school not accessible. Children in

segregated schools usually do not benefit from after school programs, reducing their ability

to engage in leisure and physical activities that are essential for their health and

development. Research shows that children with disabilities integrated in regular schools

participate more in physical activities, but have less opportunity to engage in social

activities, and are often not fully integrated into the school activities58.

In terms of academic achievement, and specifically literacy, “across all provinces, students

with cognitive disabilities score significantly lower than those without disabilities. This

difference was most pronounced in Newfoundland and Labrador, Ontario and Alberta and

least pronounced in Prince Edward Island. In Alberta, students with no disabilities had the

highest scores in Canada, but those with cognitive/emotional difficulties had reading

literacy levels comparable to those for students with cognitive/emotional disabilities in the

other provinces.59”

Issue 36: Please inform the Committee about the situation of deaf, deaf-blind and blind

learners with disabilities.

Details: In Canada Deaf, deaf-blind and blind people still face accessibility barriers to some

of the educational institutions; therefore, equal access is not protected enough under the

law. In Ontario, for example, the Provincial Education Act affirms Sign language as a

language of instruction of education for Deaf children, but it is not promoted, protected or

encouraged. In practice, Ontario still promotes speech-language rehabilitation and

mainstream schools for Deaf students. Other Provinces and Territories report similar

experience.

There are insufficient resources for school education of deaf-blind children across Canada

and few places where deaf-blind children can have an accessible environment and

opportunity to reach their full potential academic terms and social development. The

challenges relate especially to insufficient intervener and funding shortfalls for the diverse

needs of deaf-blind children.

Approximately 85% of Canada’s estimated 678 students who use braille are being educated

in the inclusive, public school setting with 70% spending the majority of their day in the

same classrooms as their same-aged peers. Braille is critical for gaining knowledge of

literacy and moving into successful employment. For anyone born blind or partially

56 Children with disabilities and the educational system — a provincial perspective, Dafna Kohen, Sharanjit Uppal, Anne

Guevremont, and Fernando Cartwright. Health Analysis and Measurement Group. Statistics Canada. 57 The PALS was discontinued in 2006 and there is no information about childhood disability being collected at the national

level since 2006.

58 Shikako-Thomas et al., 2013; Law et al., 2006 59 (http://www.statcan.gc.ca/pub/81-004-x/2007001/9631-eng.htm).

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sighted as a youth, it provides them with a significant amount of additional learning, Blind

and partially sighted children in an integrated setting are not being provided an adequate

amount of materials in an accessible format and are not getting adequate instruction in

learning to read Braille.

In post-secondary institutions, Deaf people are still faced with accessibility barriers in

various provinces because reasonable accommodations such as Sign language

interpretation, closed captioning in the classroom are not provided properly. For instance,

there are concerns that Deaf students at the post-secondary institutions are required to pay

Sign language interpreters first in order to obtain the student grants later, which indicates

that it is a negative effect on these Deaf students to obtain an equal basis in the higher

education.

According to the Canadian Survey on Disabilities only 44% of Canadian with seeing

disabilities have completed post-secondary education compared to 61% of Canadians who

do not have a disability. Barriers include lack of access to educational print materials in

alternative formats such as Braille, large print and accessible audio and lack of access to

technology. Students are not able to access materials in different languages.

In Canada, there is ongoing closure of Deaf schools because provincial governments do not

promote the rights of using Sign languages in education. Deaf children who are not exposed

to Sign languages will experience language deprivation. In order to ensure schools with

Deaf children are environments which maximize academic and social development, direct

instruction in Sign language must be provided along with opportunities to study Sign

language as a school subject and access bilingual learning materials in Sign language and

qualified Sign language interpreters.

The Deaf community strongly believes that bilingual and bicultural education will ensure

that Deaf children reach their full educational potential. As ASL and LSQ are the only fully

accessible languages for Deaf children, bilingual education programs must be provided to

ensure Deaf children achieve on the same level as their non-Deaf peers.

Issue 37: Please explain in detail how the State party is working towards inclusive

education, in particular for children with high-level support needs across all provinces

and territories; please also provide information about reasonable accommodation and

support measures for students with disabilities, including blind, deaf and deaf-blind

learners at all levels of the mainstream education system, with a particular emphasis

on Aboriginal children.

Details: In Moore v British Columbia 60 the Canadian Supreme restored classroom supports

for teachers in classrooms in BC the Court agreed that ‘education is a service’ under human

rights legislation to which children with disabilities are entitled to equal access, saying,

“Adequate special education... is not a dispensable luxury... it is the ramp that provides

access to the statutory commitment to education made to all children in British Columbia.”

This standard, as mandated by the Supreme Court, has yet to be fully realized across the

country.

60 Moore v. British Columbia (Education), 2012 SCC 61, [2012] 3 S.C.R. 360

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Provincial/territorial (PT) governments for the most part have not established a clear

legislative framework and mandate for inclusive education and to uphold the rights of Deaf

learners. New Brunswick is the one jurisdiction that has mandated inclusive education and

invested significantly in resource teachers to enable teachers in the general

classroom/common learning environment to teach to the diversity of all students and to

adapt curriculum and teaching methods to enable full inclusion. New Brunswick has been

internationally recognized for its leadership.

Suggested recommendations:

• Given how fundamental education is to the enjoyment and exercise of full citizenship,

Canada should proactively encourage the Council of Ministers of Education (which

brings all PT Ministers together) to extend the New Brunswick law, policy and practice

standards across the country.

• Canada must provide comprehensive resources/supports for full and effective

classroom supports to ensure inclusive education – this includes training of staff to

support inclusion of children with disabilities in all aspects of school life such as

physical education and social opportunities

• Canada must uphold the rights of Deaf and deaf-blind children to inclusive education via

direct instruction in and study of ASL and English, and French and LSQ in Deaf schools

and other schools, and other methods of communication for deaf-blind students.

• Canada must adopt and enforce laws, regulations and policies to recognize Sign

languages as languages of instruction in all schools, including Provincial Schools for the

Deaf, and to allow Deaf students to attend Provincial Schools for the Deaf or local

schools which provide direct instruction in Sign language in addition to qualified Sign

language interpreters, access to bilingual learning materials, and opportunities to study

Sign language as a school subject.

• Canada must recognize and provide resources for more post-secondary programs to

train professional interveners’ and interpreters.

• Students who use braille and are learning to read must receive daily braille literacy

instruction from a Teacher for Students who are Blind or Visually Impaired.

• School Districts with students who use braille access and use individuals certified in

Unified English Braille Code (UEB) to produce the day-to-day braille materials.

• Canada must provide students who are blind or partially sighted with educational

material in an appropriate alternative format such as Braille, large print and accessible

audio.

• Canada must restore a national data collection mechanism for children with disabilities

to be able to generate accurate estimates to guide policy-making, benchmarking and

monitoring progresses in different aspects such as education and service provision for

students with disabilities.

Article 27: Work and Employment

Issue 38: Please give an update on further measures taken to increase the levels of

employment by persons with disabilities, including persons with intellectual and/or

psychosocial disabilities.

Details: In 2011, the employment rate among persons aged 15 to 64 with a reported

disability was 47% compared to 74% among those without a disability. Some groups within

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the population with disabilities experienced even lower employment rates. Among women

with disabilities, the rate was 45%. Among youth aged 15 to 24 years, 52% of youth without

disabilities were employed compared to only 32% among youth with disabilities. Only 26%

of Canadians with very severe disabilities were employed. Only 22% of people who were

Deaf, deafened or hard or hearing were employed. Only 37% of working age Canadians who

are blind are employed.

Approximately 500,000 workers in Canada are injured or acquire work-related illnesses

each year. About 10% have serious injuries that become permanent disabilities. Of this

10%, approximately half are able to return to work. The other 50% (or 25,000 people) end

up unemployed or under employed, depressed and suffer deteriorating health status. Many

who attempt to return to work become injured a second or their time, leading to greater

impairments and eventually lose their attachment to the labour market.

Canada has failed to effectively ensure access to work for persons with disabilities. Recent

years have seen a dramatic rise in part-time or precarious employment that provides no

access to benefits. People with disabilities and among them women, racialized persons,

immigrants, Indigenous people, older adults and young people are disproportionately

represented among those relying on precarious employment. The federal government’s

response to address these disparities has been ineffective.

The federal government provides millions of dollars in wage subsidies, through a variety of

federal-provincial/territorial agreements. Yet many who work in the field argue that

subsidies are not effective in the long term. While there has been an evaluation process of

employment programs for people with disabilities, the effectiveness of subsidies has not

been measured and these wage subsidies remain at the heart of this program.

In 2014, Canadian business and government established “SenseAbility” to promote

employment for people with disabilities. The focus is on employers who are already hiring

people with disabilities - mainly large firms. This has turned attention away from small and

medium-sized businesses, where the majority of jobs in Canada are found. These small and

medium employers need financial support to lessen the cost of accommodation.

The lack of harmonization of employment-related laws and policies, such as Employment

Standards, Labour Relations, Workers Compensation, Human Rights, Employment

Insurance, CPP-Disability and Social Assistance, creates barriers for people with disabilities

seeking employment. In 2012, a change to the employment equity legislation found

federally regulated employers are no longer held to the same standards as the federal

government.

The Government of Canada allocates $222 million annually to provinces and territories

through Labour Market Agreements for Persons with Disabilities (LMAPDs) to design and

deliver programs and services to increase employment opportunities for persons with

disabilities. The Government of Canada indicated in their report that a new generation of

these agreements will include stronger accountability regimes. While well intentioned, the

Government of Canada has little to no control over the allocation of the resources within the

LMAPDs. This funding often does not focus on employment, but is rather redirected to

health.

Securing employment is an important first step! Retaining employment and having the

opportunity to experience progression within the workplace is an important next step

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(Article 27.1(e). In 2010, 41% of people with disabilities who reported employment income

were earning less than $15,000. Among people without disabilities, only 28% reported this

level of employment income.

Issue 39. Please provide information about the number and places for sheltered

workshops or similar segregated employment settings for persons with disabilities. Has

the number increased or decreased since 2010?

Details: Although enrollments in sheltered workshops are slowly declining, segregated day

programming and enclave-based employment persist as a dominant model of support for

persons with disabilities, particularly intellectual disabilities, in Canada. With below

minimum wage compensation, they constitute a form of financial exploitation and social

and economic exclusion with substantially lower quality-of-life outcomes than employment-

focused approaches.

It is extremely difficult to get any data about the number of people with disabilities working

in sheltered workshops throughout Canada. The Government of Ontario surveyed agencies

that provide segregated employment settings. Of the 50% that did respond, it was reported

that 3,463 individuals were involved in 52 ‘workshops.’

Suggested recommendations:

• Canada should initiate a robust evaluation of the effectiveness of wage subsidies to

lessen the gap in employment rates between Canadians with disabilities and Canadians

without disabilities.

• Canada should create a national accommodation fund that is operated on a continuous

basis by an NGO, to ensure employers are able to hire without undue hardship.

• Canada should work with other levels of government, unions, employers and the civil

society to create a harmonized approach to remove barriers to employment that are

imbedded in current laws, programs and policies.

• Canada must develop a reporting mechanism that includes indicators of effectiveness of

the initiatives undertaken through programs funded by the LMAPDs.

• Canada must develop a robust definition of retention that can be utilized to ensure that

employees with disabilities experience comparable job retention and career

advancement opportunities to those afforded to people without disabilities.

• Canada should initiate an effective transition from sheltered workshops and day

programs to Employment First approaches incorporating a framework that includes

clear definitions and principles, cross-departmental and inter-jurisdictional policy and

ongoing processes of capacity development at the local level.

• The federal government should create a targeted fund within the Opportunities Fund

for Persons with Disabilities to develop a national partnership and local demonstration

initiatives focused on transitioning from sheltered workshop and day programs to

Employment First programming.

• The federal government should fund new priorities within the federal-provincial

Multilateral Framework Agreement for Labour Market Agreements for Persons with

Disabilities, and the federal-provincial/territorial Labour Market Agreements.

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Article 28: Adequate standard of living and social protection

Issue 40: Please provide disaggregated information about the percentage of persons

with disabilities, particularly indigenous persons with disabilities and women with

disabilities, who receive funding for housing and adaptation. Please provide

information about poverty reduction strategies that include persons with disabilities.

Details: Housing: Canada is conducting consultation concerning the development of its first

national housing strategy. Civil society has been engaged in this exercise and has been

bringing forward concerns related to Canadians with disabilities. According to the 2012

Canadian Survey on Disability, 10.7% of Canada’s adult population with disabilities are

living in housing does not meet one or more of the adequacy, suitability or affordability

standards, and have to spend 30% or more of its before-tax income to access acceptable

local housing.61

Among people with disabilities living on a low income, 15.5% live in housing that is in need

of major repairs because of plumbing problems, electrical wiring and structural issues,

compared with 9.8% of people without disabilities who live on low incomes. 62

15.1% of working-age women with disabilities in low income households live in places that

are in need of major repairs, such as for defective plumbing or electrical wiring, or for

structural repairs to walls, floors or ceilings. This is the case for 12.1% of their counterparts

who live above the LICO (“Low Income Cut Off,” sometimes called the poverty line) and for

6.4% of women without disabilities. 63

The 2011-14 “Investment in Affordable Housing Strategy” aimed to increase the supply of

affordable housing, but no data have been provided to indicate the number of people with

disabilities who have benefited from this program.

Income assistance: Canadians with disabilities, tend to have a lower standard of living than

others due to factors such as low income, lower educational attainment, lack of affordable

housing, and unmet needs for aids and devices.

Income assistance programs across Canada must have regular increases that respond to the

cost of living. People on income support should have access to maximum support from all

levels of government without deduction. For example, if someone is on Canada Pension Plan

Disability (CPPD), they should be able to receive their provincial social allowance without

deduction until they reach the LICO.

Moreover, if people are able to work, they should also be able to work without deduction

until their income reaches the LICO. This is not the case in most jurisdictions.

61 Unpublished data, 2012 Canadian Survey on Disability 62 "On the Home Front: Poverty, Disability, Housing and Help with Everyday Activities"

http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/on-the-home-front) 63 "Gender, Disability and Low Income” http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-

profile/gender-disability-low-income

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Suggested recommendations:

• Canada’s proposed national housing strategy must ensure access to affordable and

accessible housing for persons with a disability.

• Canada’s income assistance programs must have regular increases that reflect increases

to the cost of living. People on income assistance should have access to maximum

support from all levels of government without deductions based on access to other

programs.

C. Specific obligations (Articles 31-33)

Article 31 – Statistics and Data collection

Details: In 2010, the federal government announced the implementation of a new Data and

Information strategy (DIS) concerning Canadians with disabilities and it was embraced by

civil society. There is now a new short and long set of screening questions to identify adults

with disabilities. These questions were used in the 2016 Census of Population, the 2012

Canadian Survey on Disability, and on some cycles of the General Social Survey and the

Canadian Income Survey. They will be included in the 2017 Canadian Survey on Disability.

However, there has been little progress in other areas. In terms of coverage, Canada is

missing close to one million adults and children with disabilities from estimates by limiting

surveys to adults residing in private households.

These surveys exclude adults living in households in First Nations communities. The

1991 Aboriginal Peoples Survey showed that the rate of disability was higher among

residents in these communities than in the rest of Canada.

Children with disabilities have not been included since the 2006 Participation and

Activity Limitation Survey. In that survey, the rate of disability among children under the

age of 15 years was 3.7% (an estimated 202,000 children). While the new Canadian Health

Children and Youth Survey includes questions to identify children and youth with

disabilities, the pilot survey questionnaire does not include any questions on the nature and

extent of barriers encountered by the child/youth with disabilities or the impact on the

family. The survey is also using different questions to identify youth with disabilities (aged

15 to 17). This will result in two different estimates for this age group.

Adults with disabilities living in health-related institutions have not been included

since the 1991 Health and Activity Limitation Survey. According to the 2011 Census of

Population there were an estimated 445,000 individuals residing in long-term care

facilities, residential care facilities, group homes and other health-related institutions. It is

assumed that the majority of these individuals have some level of disability but little is

known about the nature and extent of neither their disability nor their need for supports.

Given the federal government's focus on housing and caregiving, such data are needed to

explore issues such as what prompted the move into care, etc. to inform the development of

the housing strategy and discussions related to supports for caregivers.

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Deaf people have not been included in the Data gathering techniques in Canada because it

does not distinguish between levels of hearing loss, so no accurate information on the

number of Deaf people in Canada exists in particular to our Sign languages.

Little is known about youth and adults with disabilities in correctional facilities and

penal institutions except that it is known anecdotally that many have mental health issues

and learning disabilities. According to the 2011 Census of Population, there were an

estimated 21,855 individuals with disabilities living in such facilities.

Data on the homeless is sparse and information about disability among the homeless is

anecdotal only. The new "Point-in-Time" (PIT) Count survey is scheduled for 2018 but the

questionnaire does not include any question about disability. This might be an opportunity

to expand the PIT to include one or more disability questions.

Suggested recommendations:

• Canada should explore opportunities to collect pertinent information on these missing

populations to ensure that they are addressing the needs of ALL Canadians with

disabilities.

• According to Canada’s State Report, the new DIS was supposed to produce an

information platform that brought together all data concerning people with disabilities

as derived from administrative data and survey data and that these data were to be

made more accessible to civil society. This has not happened.

• Canada must make good on its promise to develop an information platform so that

available data are accessible to civil society.

Article 33: National implementation and Monitoring

Issue 43: Please provide information about any measures taken towards establishing

an independent mechanism in compliance with article 33(2). Please also provide

information about measures to ensure participation of persons with disabilities in line

with article 33(3).

Canada has not designated an independent mechanism to promote, protect and monitor the

implementation of the Convention, as required by article 33.2. The Canadian Human Rights

Commission, with the appropriate mandate and resources, should be designated as the

monitoring mechanism. The Canadian Human Rights Commission has the legislative basis to

promote, protect and monitor human rights in accordance with the Paris Principles.

However, the Commission cannot effectively fulfill this function within its existing resources

or a narrowly focused federal mandate. To be effective in this role, the Commission needs a

clear mandate to monitor the implementation of the Convention nationally, not just

federally. To do this effectively, the Commission will need to collaborate with provincial and

territorial statutory human rights institutions and consult with disability communities.

Canada is not fully involving people with disabilities and their organizations in all stages of

planning, implementation and monitoring of the Convention. The 2013 decision by Canada

(Social Development Partnerships Program – Disability) to move from its historic on-going

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financial support of disabled peoples’ organizations to an open competitive process has had

a devastating impact on the organizations that represented numerous factions within the

Canadian disability community. Canada has a robust network of organizations that can

support the diverse needs of this heterogeneous population to ensure that all disabilities

and all ages are truly represented. Indigenous persons with disabilities must also have

opportunities to be involved in monitoring and implementation efforts. Indigenous persons

with disabilities require resources to support their involvement.

The Government of Canada can demonstrate leadership on national implementation of the

Convention by creating a federal-provincial-territorial mechanism that includes a mandate

for consultation with the disability communities, for ongoing collaboration between federal,

provincial and territorial governments, and for the development of a shared

implementation strategy. This recommendation is critical if Canada is to make further

progress toward improving the living conditions, in general, for persons with disabilities. It

is also required in order to comply with articles 33(1) and 4(3) of the Convention.

Experience shows that for such a mechanism to be effective, it has to function at least at the

assistant deputy minister level and avoid the practice of downward delegation to working-

level officials who do not have the authority to advance the policy leadership required for

full implementation of the Convention.

Canada’s report (Para 41) refers to an ‘F-P/T Persons with Disability Advisory Committee’

as an important way in which Canada is fulfilling its obligations under Article 33. This

committee is not known to the disability community and has not consulted with DPOs.

Suggested recommendations:

• Canada must designate the Canadian Human Rights Commission as the independent

mechanism to promote, protect and monitor the implementation of the Convention.

Additional resources must accompany this designation in order to enable the

Commission to adequately fulfill the role.

• Canada must designate funding to support disability organizations to fulfill their role in

planning, implementing and monitoring the Convention. Particular attention must be

paid to ensure that children and youth with disabilities, indigenous persons with

disabilities, Deaf persons and women with disabilities must also have sufficient

resources and opportunities to participate in monitoring and implementation efforts.

• Canada, through the existing federal-provincial-territorial mechanism and in

consultation with the disability community, must develop and execute a shared plan to

implement the Convention.